



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 8469398

Date: DEC. 28, 2020

**Appeal of Nebraska Service Center Decision**

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an electric car system engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).<sup>1</sup> *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</sup>, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

<sup>2</sup> See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>3</sup>

## II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility for a national interest waiver under the *Dhanasar* analytical framework.

With respect to his proposed endeavor, the Petitioner asserted at the time of filing that he intended “to look for work opportunities in automobile industry, including car area network, on-board terminal manufacturers, such as Ford, GM, Tesla, Cummins, etc.”<sup>4</sup> He further indicated that he planned “to provide services for research and development of vehicle’s car area network, product design, supplier management, testing, quality, and internationalization. . . . I will be able to provide professional guidance for the aforementioned automobile manufacturers to meet the Chinese laws and localization.”

Regarding his proposed work in the “testing industry,” the Petitioner stated: “I . . . can develop complex automatic testing software for instruments and equipment of Agilent, Tektronix, Keysight, [and] Fluke, by connecting interface of GPIB, USB, Ethernet, [and] RS-232 with sensors from [redacted] and other brands, providing professional and efficient testing services for all industries.” In addition, as to his proposed work in the information technology (IT) industry, he indicated that he has “a strong capacity in software development” and that he intended “to look for job opportunities in IT enterprises for the positions such as development, testing, and team management.” With regard to his proposed endeavors involving “entrepreneurship” and “investment,” the Petitioner asserted: “I can try to find entrepreneurial opportunities. I will start my own business through my professional ability and development interest. . . . I will also consider providing equity investment to other start-ups and also providing assistance in terms of entrepreneurial and managerial skills.”

The Director issued a request for evidence (RFE) asking the Petitioner to provide clarification as to which one or more of these endeavors he intends to pursue in the United States. He was informed that if he intended to pursue multiple endeavors, he should provide information and evidence regarding his specific plans for each undertaking.

In response to the Director’s RFE, the Petitioner stated:

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<sup>3</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>4</sup> The Petitioner listed these potential U.S. employers, but did not provide evidence of his communications with them regarding work opportunities or their interest in his future research and development services. As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about these positions to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

Tesla will be my first choice for employment in the positions of director of subsystem like infotainment system, connected vehicle system, coordinated vehicle-road communication system, internet of vehicle background system etc., or director of components and parts. I will be responsible for defining and selecting the best solutions for internet of vehicle, combine 5G, internet, and big data based on norms of the automobile industry, to maximize user experience and competitiveness.

If there is no right opportunity at Tesla, I will look for job opportunity at GM or Ford.... I can perform in the areas of research and development of internet of vehicle, product design, supplier management, testing, quality assurance, and internationalization.

The record, however, does not include any documentation of the Petitioner's communications with Tesla, GM, or Ford, or their interest in his services as a director of automotive networking or subsystems. Nor is there information or evidence from these companies indicating the type of automotive engineering projects he will undertake on their behalf.<sup>5</sup>

Additionally, the Petitioner asserted that he planned on making "investment in innovative projects or enterprises. . . . I will make risk investment on entrepreneur teams to help them realize their dreams.... I will have sufficient industry understanding and accumulated relevant resources to start my own business in the electric vehicle industry utilizing my professional ability and interest." The Petitioner, however, did not elaborate on the types of products and services his proposed electrical vehicle business will provide. Nor does the record demonstrate that this endeavor will offer substantial economic benefits to the region in the United States where his company will operate or to the nation. For instance, the Petitioner has not identified the location of his future company's operations in the United States, nor has he provided information regarding any projected job creation resulting from his proposed business. The evidence does not show that his proposed business venture or future investments offer benefits to the regional or national economy that would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

On appeal, the Petitioner contends that his "proposed endeavor is the advancement of the U.S. electric vehicle market in the role of an electric vehicle system engineer." The record, however, does not include supporting documentation to corroborate the Petitioner's assertions regarding his proposed engineering work in U.S. electric vehicle market, nor has he identified the specific projects he plans to undertake in this country. Despite the Director's request for clarification, the Petitioner has not provided adequate information and evidence regarding his specific proposed activities in the United States. In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign

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<sup>5</sup> The Petitioner provided articles about the global electric vehicle market's size, compound annual growth rate, top sales areas, and renewable energy benefits, but they do not render the work of an individual electric car system engineer nationally important under the *Dhanasar* framework. While the aforementioned articles demonstrate the economic benefits of the electric vehicle market, they are not sufficient to establish the national importance of the Petitioner's particular proposed endeavor. The relevant issue is not the importance of the field or industry in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. Without further evidence clarifying his particular proposed endeavor, the record does not show that the Petitioner's undertaking stands to sufficiently extend beyond his future employer or potential business ventures to impact his field or the electric vehicle industry more broadly at a level commensurate with national importance.

national proposes to undertake.” *Id.* at 889. Here, the record does not sufficiently explain the Petitioner’s proposed endeavor(s) such that we are able to determine, without additional information and evidence, that his work will have both substantial merit and national importance and that he is well positioned to advance his proposed endeavor.

### III. CONCLUSION

As the Petitioner has not met the first and second prongs set forth in the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.